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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/750,978

12/31/2003

John J. Shin

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5462

23392 7590 11/14/2008  
FOLEY & LARDNER  
2029 CENTURY PARK EAST  
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EXAMINER

BHAT, ADITYA S

ART UNIT

PAPER NUMBER

2863

MAIL DATE

DELIVERY MODE

11/14/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/750,978	<b>Applicant(s)</b> SHIN ET AL.	
	<b>Examiner</b> ADITYA S. BHAT	<b>Art Unit</b> 2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) 17-25,37,39-42 and 50-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16,26-36,38,43-49 and 57-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/11/05 5/27/05</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status***

1. Claims 1-61 are currently pending in this application. Claims 17-25,37,39-42 and 50-56 have been withdrawn from further consideration in response to a restriction requirement.

### ***Election/Restrictions***

2. Applicant's election with traverse of the first species 1-16,26-36, 38 and 43-49 in the reply filed on 7/21/2008 is acknowledged. No reasoning for the traversal has been provided in the response. This is not found persuasive because merely.

The requirement is still deemed proper and is therefore made FINAL.

### ***Information Disclosure Statement***

3. The information disclosure statement (IDS) submitted on 1/11/2005 and 5/27/2005 was received. The submission is in compliance with the provisions of 37 CFR 1.97 and 37 CFR 1.98. Accordingly, the information disclosure statement has been considered by the examiner.

### ***Drawings***

4. The drawings submitted on 12/31/2003 are in compliance with 37 CFR § 1.81 and 37 CFR § 1.83 and have been accepted by the examiner.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4, 7-10,13-16, 26-30, 33-36, 38, 43-46, 49 and 57-61are rejected under 35 U.S.C. 102(e) as being anticipated by Shin et al. (USPN 6,895,263)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With regards to claims 1 and 43, Shin et al. (USPN 6,895,263) teaches method and apparatus for verifying the integrity of sensor data comprising:

receiving a first data value from the sensor;(Col. 2, lines 59-60)

comparing a first parameter relating to the first data value to a first threshold value; (col. 13, lines 65-67)

receiving a second data value from the sensor;(col. 17, lines 40-41)

comparing a first parameter relating to the second data value to the first threshold value; (Col. 17, lines 38-39)

continuing receipt of data from the sensor when the first parameter relating to the first data value exceeds the first threshold value and the first parameter relating to the second data value does not exceed the first threshold value;(col. 18, lines15-20) and

terminating receipt of data from the sensor when the first parameter relating to the first data value and the first parameter relating to the second data value exceed the first threshold value. (col.18, lines 39-42)

With regards to claims 2, 8, 27, 44, and 58, Shin et al. (USPN 6,895,263) teaches the sensor is a glucose sensor. (12;Col. 15, lines 9-10)

With regards to claims 3, 9, 28, 45, and 59, Shin et al. (USPN 6,895,263) teaches the data value is a blood glucose concentration. (Col. 15, lines 29-30)

With regards to claims 4, 10, and 46 Shin et al. (USPN 6,895,263) teaches discarding the first data value when the first parameter relating to the first data value exceeds the first threshold value and the first parameter relating to the second data value does not exceed the first threshold value. (col.17, lines 60-63)

With regards to claims 7 and 49 Shin et al. (USPN 6,895,263) teaches comparing a second parameter relating to the first data value to a second threshold value; (Col. 17, lines 38-39)

continuing receipt of data from the sensor when the first parameter relating to the first data value exceeds the first threshold value, the second parameter relating to the first data value exceeds the second threshold value, and the first parameter relating to the second data value does not exceed the first threshold value; (col. 18, lines15-20)and

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terminating receipt of data from the sensor when the first parameter relating to the first data value exceeds the first threshold value, the second parameter relating to the first data value exceeds the second threshold value, and the first parameter relating to the second data value exceeds the first threshold value. (col.18, lines 39-42).

With regards to claims 12 &13 Shin et al. (USPN 6,895,263) teaches terminating receipt of data from the sensor occurs when first parameter relating to the second data value exceeds the first threshold value within a predetermined period of time. (col.18, lines 39-42)

With regards to claims14 -16, and 33-34, Shin et al. (USPN 6,895,263) teaches the first/second threshold varies depending on the blood glucose concentration. (Col. 8, lines 49-50)

With regards to claims 26 and 57, Shin et al. (USPN 6,895,263) teaches a method and apparatus for calibrating a sensor comprising:

receiving a plurality of data values from the sensor; (Col. 2, lines 59-60)

determining the reliability of each data value of the plurality of data values;

discarding data values of the plurality of data values that are unreliable;(col. 17, lines60-64)

filtering the data values of the plurality of data that have not been discarded; and adjusting an output of the sensor using the filtered data values. ;(col. 17, lines 56-66)

With regards to claims 29-30 and 60-61, Shin et al. (USPN 6,895,263) teaches determining the reliability of each data value comprises comparing each data value to a predetermined threshold. (Col. 17, lines 38-39)

With regards to claim 35, Shin et al. (USPN 6,895,263) teaches discarding data values comprises discarding data values that do not meet a pre-established criterion related to the predetermined threshold. (col. 17, lines 60-64)

With regards to claim 36, Shin et al. (USPN 6,895,263) teaches filtering the data values comprises filtering the data values with an adaptive filter.(col. 17, lines 60-63)

With regards to claim 38, Shin et al. (USPN 6,895,263) teaches filtering the data values with an adaptive filter comprises using the adaptive filter with a parameter based on the data values of the plurality of data that have not been discarded. (col. 17, lines 55-65)

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5-6,11,31-32 and 47-48 are rejected under 35 U.S.C. 103(a) as being obvious over Shin et al. (USPN 6,895,263) in view of Riedel (USPN 6,069,011).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject

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matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

With regards to claims 5-6, 11, 31-32 and 47-48 Shin et al. (USPN 6,895,263) does not teach first and second order derivatives.

Shin et al. (USPN 6,895,263) teaches first and second order derivatives.

It would've been obvious to one of ordinary skill in the art at the time of the invention to modify the Shin et al. (USPN 6,895,263) invention to include first and second order derivatives taught by Riedel (USPN 6,069,011) in order to get a more accurate reading of the desired parameter.

### ***Conclusion***

**9.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Steil et al. (USPN 7,267,665) teaches a closed loop system for controlling insulin infusion.

**10.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADITYA S. BHAT whose telephone number is (571)272-2270. The examiner can normally be reached on M-F 9-5:30.



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**11.** If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**12.** Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aditya Bhat/  
Examiner, Art Unit 2863  
November 10, 2008